

# Non-Criminal Barricades

4 hours

**COURSE GOAL:** Identify Non-Criminal Barricades vs Criminal Barricades

**COURSE OBJECTIVES:**

1. Responding to subjects in crisis (Criminal vs Non-Criminal 5150)
2. Solo barricade vs Hostage barricade
3. Disengagement

**EXPANDED COURSE OUTLINE:**

1. Special Relationships
  - a. While the general rule is that law enforcement officers are not legally liable for failing to protect a citizen, there are exceptions to this rule. One such exception is the special relationship doctrine.
  - b. Public Duty Doctrine
    1. Established legal doctrine states that law enforcement officers have a duty to the public but not individual citizens.
  - c. In some cases, law enforcement has an affirmative duty to protect a specific person, such as when law enforcement has a “special relationship” with the person. This special relationship law enforcement to assume control over the individual in order to provide enough protection. Once this relationship exists, law enforcement has the legal duty to take reasonable steps to ensure the safety and care of the individual and to safeguard the individual from foreseeable risks.
  - d. A special relationship between a law enforcement officer and a member of the public can be formed in two narrow circumstances. First, a special relationship is created where the officer makes a representation (express or implied) that is detrimentally relied upon and causes a foreseeable harm. For example, in *Morgan v. County of Yuba*, the county was held liable where no warning was given after a deputy sheriff promised to warn decedent if a prisoner, who had threatened her life, was released and didn’t. Second, a special relationship is created where the officer engages in an affirmative act that increases the foreseeable risk of harm to the individual. For example, in *McCorkle v. City of Los Angeles*, an officer investigating accident directed plaintiff to follow him to the middle of the intersection where plaintiff was hit by a car.
2. **Responding to subjects in crisis**
  - a. Negotiation
    1. CIT vs CNT/HNT
  - b. Time and distance as a tactic
    1. Maintaining distance from the suspect allows:
      - a. An officer more time to assess, plan and react.
      - b. Decreases the effectiveness of a suspect’s attack and the suspect’s weapon.
    2. Time may defuse the intensity of a situation
    3. Try to maintain distance to exploit time.
  - c. Threat Analysis

1. In gathering intelligence on the subject in question, we are trying to judge the level of threat the suspect poses to us. Of concern is what the subject's reaction will be to law enforcement and if the subject will try to commit "suicide by cop".
    - d. Portland Police Bureau and how they deal with the mentally ill
      1. Portland Police DOJ Settlement Agreement<sup>1</sup>
        - a. The DOJ settlement was finalized in 2012. It contained 190 separate directives in a 77-page document.
3. **Barricaded & Isolated Suspects, Hostage Problems**
  - a. Definition <sup>2</sup>

An incident where a person maintains a position of cover or concealment and ignores or resists law enforcement personnel, and it is reasonable to believe the subject is armed with a dangerous or deadly weapon.
  - b. Isolated
    1. Much of what applies to a barricaded suspect also applies to a suspect who may not be barricaded but is otherwise contained.
  - c. Containment
    1. "The enforcement of boundaries that define the acceptable area of noncompliance. A suspect who is not bound by moral restraint (he stops simply because you told him to stop) or physical boundaries, including the boundary created by an officer's actual or threatened use of force—is not contained! Distance and cover may mitigate threats against officers and help avoid the escalation that can result from close confrontation. But officers who maintain distance and cover, may sacrifice containment and control." – Force Science Institute
  - d. Criminal vs. Non-criminal Barricade Response
    1. SOPs
    2. Risk v Benefit of entry vs. withdrawal
    3. Consider if other tactical options are appropriate
4. **Disengagement**
  - a. Most progressive law enforcement agencies have adopted disengagement as a viable option when certain criteria are met.
  - b. Disengagement is sometimes known as a "tactical withdrawal" and involves law enforcement leaving as opposed to engaging with the suspect in a way that may provoke a violent confrontation (e.g. making entry into a structure.)
5. **Re-engagement**
  - a. Some progressive police agencies have moved beyond simply disengaging and have adopted plans to re-engage with the suspect.
  - b. They solicit the assistance and participation of others such as family, friends, social workers and mental health professionals.
  - c. Decide on re-engagement plan per department policy
6. **The Armed Suicidal Barricade Case Study**
  - a. The facilitator will debrief a case study and encourage students to consider their appraisal of the incident and how they would respond.

7. **Court Case Reviews**

a. **Hayes v. County of San Diego –**

1. Officers pre-shooting conduct is relevant to the decision as to reasonableness - “(A)n officer’s pre-shooting conduct is properly ‘included in the totality of circumstances surrounding [his] use of deadly force, and therefore the officer’s duty to act reasonably when using deadly force extends to pre-shooting conduct”
2. “Hayes reiterates what has been California law for over forty (40) years - “law enforcement personnel’s tactical conduct and decisions preceding the use of deadly force are relevant considerations *under California law* in determining whether the use of deadly force gives rise to negligence liability. Such liability can arise, for example, if the tactical conduct and decisions show, *as part of the totality of circumstances*, that the use of deadly force was unreasonable.”
3. State Created Jeopardy / State Created Danger.
  - a. The court may rule an officer is not entitled to qualified immunity if they can be shown to having created “state created jeopardy”.

b. **Fremont v. Adams**

1. The facilitator will discuss the incident as well as lessons learned.

